

In the Matter of Merchant Mariner's Document No. Z-118788-D1
Issued to: HENRY A. WILLIAMS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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HENRY A. WILLIAMS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 3 August, 1953, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-118788-D1 issued to Henry A. Williams upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a glory-hole steward on board the American SS BRAZIL under authority of the document above described, on or about 6 July, 1953, while said vessel was in the Port of New York, he wrongfully had in his possession certain narcotics; to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection, Leandre V. Roberts of New York City. Appellant entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of Port Patrol Officer Epps and a certified copy of the report of the U. S. Customs Laboratory in New York City.

In defense, Appellant offered in evidence a signed statement by his shipmates on the BRAZIL as to Appellant's good character. Appellant also testified under oath in his own behalf. He stated that he found the marijuana two and a half hours before meeting Port Patrol Officer Epps. Appellant said he intended to return the marijuana to the owner - or to the mate if no one claimed it.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-118788-D1 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that:

POINT I. Appellant's guilt was not proved beyond a reasonable doubt. Temporary possession of marijuana, without intent to use or sell it, does not constitute wrongful possession of marijuana. Appellant's explanation of his innocent possession is uncontradicted; and evidence of good character and reputation can create a reasonable doubt as to guilt.

POINT II. The order of revocation is unduly severe and excessive since Appellant has been going to sea since 1940. The Coast Guard policy of revocation is applicable only to those seamen who possess contraband in order to use, sell or transport it. The circumstances of this case do not put Appellant in that category.

POINT III. the order should be reversed and the specification dismissed; or the order should be modified.

APPEARANCES: Max Fruchtmann, Esq. of New York City for Appellant.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 6 July, 1953, Appellant was serving as a glory-hole steward on board the American SS BRAZIL and acting under authority of his Merchant Mariner's Document No. Z-118788-D1 while the ship was in the Port of New York.

During a routine search of the ship by the U. S. Customs authorities on this date, Port Patrol Officer Epps met Appellant in a passageway and asked him if he had any contraband on his person. Appellant answered that all he had was money; but after Mr. Epps told Appellant to take out what he had in his pockets, Appellant said he had some "weed" and produced some marijuana wrapped in newspaper. Appellant stated that he had found the package while cleaning one of the rooms; he opened the package and recognized it as marijuana; and he retained possession in order to return it to the person who had lost it.

Appellant's prior disciplinary record consists of a probationary suspension in 1945 for absence without leave. He has been going to sea since 1940.

OPINION

It is my opinion that there is no merit in the points raised on appeal. Appellant admitted that he knowingly had possession of marijuana. Such possession is prima facie evidence of guilt (Yee Hem v. The United States (1925), 268 U. S. 178) and the Examiner rejected Appellant's explanation of how the marijuana came into his possession. Appellant's testimony is in accord with that of the Port Patrol Officer that Appellant at first denied that he had any contraband on his person. This

lends weight to the reasonableness of the rejection of Appellant's explanation because of the indication that he attempted to conceal the marijuana from the Port Patrol Officer.

In any event, Appellant was guilty of wrongful possession even if his story was true that he intended to return the marijuana to another seaman who had lost it. The purpose of the Coast Guard policy of revocation in narcotics cases is to protect against the presence of narcotics on board ship. This objective would be defeated to the same extent whether Appellant returned marijuana to another seaman, sold it to him, or used it himself. Appellant's only protection would have been to surrender the marijuana to someone in authority as soon as he found it.

It is also noted that the degree of proof required in these remedial, administrative proceedings is substantial evidence rather than proof beyond a reasonable doubt.

For these reasons, I do not consider that the order is excessive despite Appellant's length of service, his prior good record and the personal hardship which it might cause him.

ORDER

The order of the Examiner dated at New York, New York, on 3 August, 1953, is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 28th day of April, 1954.